

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)

the 1996 Democratic National Convention Committee, Inc.) MUR 5080

and Andrew Tobias, as treasurer,)

and the Democratic National Committee and)

Andrew Tobias, as treasurer)

GENERAL COUNSEL'S REPORT #2**I. ACTIONS RECOMMENDED**

Take no further action against the 1996 Democratic National Convention Committee, Inc. and Andrew Tobias, as treasurer, for failing to report an in-kind contribution from the Democratic National Convention in violation of 2 U.S.C. § 437. Take no further action against the Democratic National Convention and Andrew Tobias, as treasurer, for failing to report an in-kind contribution to the 1996 Democratic National Convention Committee, Inc. in violation of 2 U.S.C. § 434(b). Close the file in MUR 5080.

II. ANALYSIS

On August 22, 2000, the Commission found that there is reason to believe that the 1996 Democratic National Convention Committee, Inc. (the "Convention Committee") and Andrew Tobias, as treasurer, violated 2 U.S.C. § 437(2) by failing to report an in-kind contribution from the Democratic National Committee (the "DNC"). The Commission also found that there is reason to believe that the DNC and Andrew Tobias, as treasurer, violated 2 U.S.C. § 434(b) by failing to report an in-kind contribution to the Convention Committee. The in-kind contribution related to the DNC's payment of hotel expenses for Scott Pastrick, then treasurer of both the Convention Committee and the DNC, and for two other rooms used by the Convention Committee at the Four Seasons Hotel in Chicago, Illinois during the week of the 1996

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Democratic National Convention, which should have been allocated, in part, to the Convention Committee.¹

The Convention Committee, the DNC, and Andrew Tobias, as treasurer of both the Convention Committee and the DNC (collectively, "Respondents"), responded to the Commission's reason to believe findings by stating that "the DNC did not make, and the 1996 DNCC did not receive, an in-kind contribution in connection with the payment of three hotel rooms," and that "the Commission should find no probable cause to believe that the DNC or the 1996 [DNCC] violated the Act or the Commission's regulations, and should close the file with respect to this matter."² Attachment 1 at 4.

Specifically, Respondents argue that a committee treasurer is responsible for five functions during the convention week, including the designation of an assistant treasurer, authorization of expenditures, receipt of any funds, recordkeeping obligations and reporting obligations. *Id.* at 2, 3. Moreover, Respondents state that during the organization of the Convention Committee, Mr. Pastrick designated Bradley K. Marshall as Assistant Treasurer, and Mr. Marshall was responsible for the day-to-day financial operations of the Convention Committee and undertook that function in Chicago during the convention.³ *Id.* at 3.

¹ During the audit process, information regarding the in-kind contribution was obtained from articles in the *Washington Post* reporting that the DNC had assumed approximately \$25,000 to \$35,000 in hotel bills incurred at the 1996 Democratic National Convention because of concerns that the donor who originally paid the bills may have used foreign funds. In addition to a suite for Mr. Pastrick, and the two additional rooms for the Convention Committee, the expenses included a suite for Marvin Rosen, then Finance Chairman of the DNC. The Audit Report on the 1996 Democratic National Convention Committee, Inc. used the conservative figure of \$25,000 in describing these expenses. See Audit Report at page 20.

² The Convention Committee, the DNC, and Andrew Tobias are represented by the same counsel, and this response by counsel is a response for all respondents.

³ According to the Audit staff, the Convention Committee paid for Mr. Marshall's hotel room.

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Additionally, Respondents submitted an affidavit by Mr. Pastrick, in which Mr. Pastrick averred that, to the best of his recollection, he delegated all of his duties as treasurer to Mr. Marshall during the convention.⁴ Attachment 1 at 6. Mr. Pastrick also stated that all of his activities during this period, except for making a short speech to the convention, consisted of fundraising activities on behalf of the DNC. *Id.* at 5. Finally, Respondents argue that the DNC determined not to use taxpayer funds by allocating the costs of the hotel rooms to the DNCC, and "that to allow the 1996 DNCC to pay for DNC fundraising costs would result in a gross abuse of taxpayer funds."⁵ *Id.* at 3.

This Office believes that an investigation is required to obtain documentation and information from the Four Seasons Hotel, the DNC, the Convention Committee and Scott Pastrick to pursue a probable cause finding against Respondents for failure to report the in-kind contribution because Respondents deny that the DNC made an in-kind contribution and the Convention Committee accepted an in-kind contribution in the form of the hotel expenses. This documentation and information, which would have to be obtained by subpoenas and possibly interrogatories or depositions, includes Mr. Pastrick's itinerary and activities during the convention week, the purpose for reserving two additional rooms for the Convention Committee,

⁴ The Commission's regulation at 11 C.F.R. § 102.7(a) provides that a political committee may designate an assistant treasurer who shall assume the duties and responsibilities of treasurer in the event of a temporary or permanent vacancy in the office or in the event the treasurer is unavailable. This Office believes that this designation by the committee should occur only in rare circumstances. The treasurer is liable for violations of the Federal Election Campaign Act of 1971, as amended, and the Commission's regulations. It is not clear why it was necessary for an assistant treasurer to assume the duties and responsibilities of the treasurer during the 1996 Democratic National Convention.

⁵ The Convention Committee had a surplus of \$50,617 and repaid funds to the United States Treasury. Thus, the Convention Committee had sufficient funds to pay the portion of the hotel expenses for Mr. Pastrick and expenses for the other two rooms that should have been allocated to the Convention Committee.

and hotel bills from the Four Seasons Hotel. This evidence is necessary to prove that an in-kind contribution was made and to determine the amount of the in-kind contribution.

This Office also believes that an investigation of this matter would not be the best use of this Office's resources. First, it would take considerable time for this Office to obtain the necessary documentation and information from the Four Seasons Hotel, the Convention Committee, the DNC, and Scott Pastrick, which may limit our ability to complete the probable cause to believe stage of the enforcement process prior to the running of the statute of limitations.⁶ Second, the amount of the in-kind contribution that should have been reported by the Convention Committee and the DNC may not be a large amount because a significant amount of the estimated hotel expenses were for Marvin Rosen, Finance Chairman of the DNC, which were properly paid by the DNC.⁷

Therefore, the Office of General Counsel recommends that the Commission take no further action against the 1996 Democratic National Convention Committee, Inc. and Andrew Tobias, as treasurer, for failing to report an in-kind contribution from the Democratic National Convention in violation of 2 U.S.C. § 437(2). Additionally, the Office of General Counsel

⁶ It is difficult to estimate when the statute of limitations would run for these reporting violations because we do not know the precise date the DNC paid the expenses for Mr. Pastrick and the two other rooms. It appears that the original donor paid the hotel expenses around the time of the convention in August 1996. Moreover, on January 8, 1997, the *Washington Post* reported that the DNC assumed payment of the expenses as a result of their previous article on this subject on December 12, 1996, but the DNC could have paid the expenses prior to the dates that the articles were published. See Attachment 2 at 2. Thus, the earliest date for the statute of limitations for the DNC and the Convention Committee might be either October 15, 2001, which is five years from the date of their first quarterly reports after the 1996 Democratic National Convention, or January 31, 2002, which is five years from the date of their first reports after the *Washington Post* reported that the DNC would assume payment of the expenses.

⁷ The *Washington Post* indicates that Mr. Rosen's suite was \$3,000 per night because he stayed in the presidential suite. See Attachment 2 at 1. Since the Democratic National Convention was held for four days, this Office estimates that Mr. Rosen spent at least four nights at the Four Seasons Hotel with room expenses of at least \$12,000.

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recommends that the Commission take no further action against the Democratic National Convention and Andrew Tobias, as treasurer, for failing to report an in-kind contribution to the 1996 Democratic National Convention Committee, Inc. in violation of 2 U.S.C. § 434(b).

III. RECOMMENDATIONS

1. Take no further action against the 1996 Democratic National Convention Committee, Inc. and Andrew Tobias, as treasurer, for failing to report an in-kind contribution from the Democratic National Convention in violation of 2 U.S.C. § 437;
2. Take no further action against the Democratic National Convention and Andrew Tobias, as treasurer, for failing to report an in-kind contribution to the 1996 Democratic National Convention Committee, Inc. in violation of 2 U.S.C. § 434(b);
3. Approve the appropriate letters; and
4. Close the file.

Lois G. Lerner
Acting General Counsel

1/30/01
Date

Kim Leslie Bright
BY: Kim Leslie Bright
Associate General Counsel

Attachments

1. Response from the 1996 Democratic National Convention Committee, Inc. and the Democratic National Convention, dated October 18, 2000
2. *Washington Post* articles

Staff Assigned: Peter G. Blumberg
Delbert K. Rigsby

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *HCS*

DATE: January 30, 2001

SUBJECT: MUR 5080- General Counsel's Report #2

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

SENSITIVE ☒
NON-SENSITIVE ☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

96 Hour TALLY VOTE ☐

DISTRIBUTION

COMPLIANCE ☒

Open/Closed Letters ☐
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DSP ☐

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PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐

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